Menteri Besar Negeri Sembilan (Pemerbadanan) v Pentadbir Tanah Daerah Seremban & Anor

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COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO N-01-17 OF 1995
MAHADEV SHANKAR, ABU MANSOR JJCA AND ABDUL MALEK J
25 SEPTEMBER, 2 OCTOBER 1995

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Land Acquisition *— Acquisition of land — Compensation — Objection against amount of compensation awarded — Land acquired for public purpose — Appellant a statutory body — Whether appellant a person interested in the land and thereby may make objection — Land Acquisition Act 1960 ss 3, 37(3)*

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The appellant was a statutory body with power to undertake ventures of a commercial or industrial nature independently or jointly with another company. They had objected to the amount of compensation awarded by the collector for the acquisition of the scheduled land on the ground that it was excessive. In the relevant form D for the proposed acquisition dated 19 February 1993, the purpose of the acquisition was 'for a public purpose ...'. The second respondent was the registered proprietor of the scheduled land who had applied to intervene. They had cross-appealed for an order that the first respondent pay the remaining 25% of the award of RM19,735,280, namely RM4,933,820 to them together with interest effective from the date the amount was due to be paid. The issue for determination was whether the appellant was a person interested in the scheduled land under the Land Acquisition Act 1960 ('the Act'), and thereby able to make an objection to the collector as regards the amount of compensation awarded for the acquisition of the scheduled land.

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Held, dismissing the appeal and allowing the second respondent's cross-appeal:

(1) It is clear that the state authority may acquire land for itself for the purposes which are stated under s 3(a) and (c) of the Act, and may acquire land on behalf of another under s 3 (b). However, before the amendment in 1991, the state authority could only acquire land for a person or corporation undertaking a work which in their opinion is of public utility under s 3(b). From 13 September 1991 onwards, pursuant to the amended s 3(b), the state authority could acquire land for a person or corporation for any purpose which in their opinion is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public.

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(2) In this case, the purpose for the proposed acquisition was for a public purpose which could only come under s 3(a) of the Act. This ruled out the involvement of any other person or corporation on whose behalf the scheduled land was acquired by the state

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A authority, namely the appellant. The appellant was therefore not a person interested in the scheduled land.

(3) The first respondent should pay the remaining 25% of the award, namely RM4,933,820, to the second respondent with interest from the date it was due and payable.

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Per curiam

It could have been better if the legislature had added '(b)' after '3' in s 37(3) of the Act as this makes it abundantly clear that the State Authority only acquires on another's behalf under para (b) but never C under paras (a) and (c). Thus when the legislature decided to widen the scope under s 3(b) of the Act, they should have likewise replaced the same words in s 37(3) of the Act in the same manner.

[Bahasa Malaysia summary

D Perayu adalah sebuah badan berkanun dengan kuasa untuk menjalankan usaha berjenis komersial atau perindustrian secara bebas atau bersama dengan sebuah syarikat lain. Mereka telah membantah terhadap jumlah pampasan yang telah diaward oleh pemungut untuk pengambilan tanah yang dijadualkan atas alasan bahawa ianya E keterlaluan. Di dalam borang D yang relevan untuk pengambilan yang dicadangkan bertarikh 19 Februari 1993, tujuan pengambilan itu adalah 'bagi tujuan awam ...'.Penentang kedua adalah tuanpunya berdaftar tanah yang dijadualkan itu yang telah memohon untuk mencelah. Mereka telah membuat rayuan balas untuk satu perintah bahawa penentang pertama membayar baki 25% award F RM19,735,280, yakni RM4,933,820 kepada mereka bersama dengan faedah bermula dari tarikh jumlah itu kena dibayar.Isu untuk keputusan adalah sama ada perayu adalah seorang yang berkepentingan di dalam tanah yang dijadualkan itu di bawah Akta Pengambilan Tanah 1960 ('Akta itu') dan oleh itu boleh membuat G bantahan kepada pemungut berkenaan dengan jumlah pampasan yang diaward untuk pengambilan tanah yang dijadualkan itu.

Diputuskan, menolak rayuan itu dan membenarkan rayuan balas penentang kedua:

H (1) Adalah jelas bahawa pihak berkuasa negeri boleh mengambil tanah bagi dirinya sendiri untuk tujuan-tujuan yang dinyatakan di bawah s 3(a) dan (c), dan boleh mengambil tanah bagi pihak yang lain di bawah s 3(b). Sebelum pindaan dibuat terhadap dalam tahun 1991, pihak berkuasa negeri hanya boleh mengambil tanah untuk seseorang atau sesebuah perbadanan yang I menjalankan suatu kerja yang dalam pendapat mereka akan kemudahan awam di bawah s 3(b). Walau bagaimanapun, dari 13 September 1991, pihak berkuasa negeri boleh mengambil tanah untuk seseorang atau sesebuah perbadanan bagi apa-apa

tujuan yang dalam pendapat mereka adalah bermanfaat terhadap perkembangan ekonomi Malaysia atau apa-apa bahagian daripadanya atau kepada orang awam secara am, ataupun apa-apa kelas orang awam. A

(2) Dalam kes ini,tujuan pengambilan yang dicadangkan itu merupakan suatu tujuan awam. Maka, pengambilan tanah hanya boleh dibuat di bawah s 3(a) Akta itu. Ini telah mengenepikan penglibatan mana-mana orang atau perbadanan yang lain, yang bagi pihak mereka tanah yang dijadualkan itu telah diambil oleh pihak berkuasa negeri, iaitu perayu. Dengan itu, perayu bukanlah seorang yang berkepentingan di dalam tanah yang dijadualkan itu. B C

(3) Penentang pertama harus membayar baki 25% award itu, iaitu RM4,933,820, kepada penentang kedua, bersama-sama dengan faedah, dari tarikh di mana award itu perlu dibayar.

Per curiam: D

Adalah mungkin lebih baik jika badan perundangan telah menambahkan '(b)' selepas '3' dalam s 37(3) Akta itu, kerana ini menyebabkannya menjadi amat jelas bahawa pihak berkuasa negeri cuma mengambil tanah bagi pihak lain di bawah perenggan (b), tetapi tidak sekali-kali di bawah perenggan (a) dan (c). Oleh itu E apabila badan perundangan membuat keputusan untuk memperluaskan skop di bawah s 3(b) Akta itu, mereka seharusnya juga telah menggantikan perkataan-perkataan yang sama dalam s 37(3) Akta itu.

Legislation referred to F

Land Acquisition Act 1960 ss 3, 37

Appeal from: Land Reference No 15–42–94 (High Court, Seremban)

Joseph Yeo and *TC Tan* (*Raja Eleena Siew Ang & Tan*) for the appellant. G
Abdul Aziz bin Abdul Rahim (State Legal Adviser) for the first respondent.
Robert Lazar (*Shearn Delamore & Co*) for the second respondent.

25 September 1995

Mahadev Shankar JCA: I have had the opportunity of reading the draft H judgment of my brother judge, YA Dato' Hj Abdul Malek bin Hj Ahmad in this matter with which I concur.

2 October 1995

Abu Mansor JCA: I have had the opportunity of reading the draft I judgment of my brother, Dato' Hj Abdul Malek bin Hj Ahmad J in this matter with which I concur.

A *2 October 1995*

Abdul Malek J: As correctly stated by the learned trial judge in his grounds of judgment, the issue for determination is whether the petitioner, now the appellant, is a person interested in the scheduled land under the Land Acquisition Act 1960 (hereinafter 'the Act') and thereby may make
B an objection to the collector and require him to refer to the court as regards the amount of compensation which the appellant alleges is excessive.

The registered proprietor of the scheduled land had applied to intervene and, with no objection from the parties, had been named the second respondent. They had also cross-appealed for an order that the
C first respondent pay the remaining 25% of the award of RM19,735,280, namely RM4,933,820, not RM4,933,748 as stated in their cross-appeal, to them together with interest effective from the date the amount was due to be paid.

The valuation report describes the scheduled land as a piece of land
D 232 hectares in area planted with oil palm and rubber trees situated 33km from Seremban, 20.5km from the proposed international airport at Sepang and 9–12km from Nilai town and Nilai Industrial Park. The valuation officer had valued the scheduled land at RM85,000 per acre.

The appellant is a statutory body with power to undertake ventures
E of a commercial or industrial nature independently or jointly with another company. They had objected to the amount of the award which they said was excessive. The second respondent is also dissatisfied with the amount of compensation and their objection to the collector's award is still pending.

The term 'person interested' has been defined in the Act as including
F every person claiming an interest in compensation to be made on account of the acquisition of land under the Act, but does not include a tenant by the month or at will. The learned trial judge found no difficulty in deciding that the second respondent is a person interested and had allowed them to intervene. He had gone into some detail, by referring to ss 3 and 37 of the Act, as to whether the appellant is also a person interested and had
G concluded by allowing the second respondent's application to intervene and dismissing the appellant's objection to the collector's award with costs.

It is pertinent at this point to reproduce s 3 of the Act as it was before amendment to para (b) which became effective on 13 September 1991:

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> The State Authority may acquire any land which is needed—
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> (a) for any public purpose;
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> (b) by any person or corporation undertaking a work which in the opinion of the State Authority is of public utility; or
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> I (c) for the purpose of mining or for residential, agricultural, commercial or industrial purposes.

The amendment to paragraph (b) reads as follows:

(b) by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or

Section 37(3) of the Act states:

> Where the total amount of any award in respect of any scheduled land exceeds fifteen thousand ringgit any Government or any person or corporation undertaking a work which in the opinion of the State Authority is of public utility, and on whose behalf such land was acquired pursuant to the provisions of section 3, shall be deemed to be a person interested in any scheduled land under the provisions of subsection (1), and may make objections on any of the grounds specified in subsection (1).

Learned counsel for the appellant was of the view that the words 'any person or corporation undertaking a work which in the opinion of the State Authority is of public utility' in s 37(3) of the Act should be deleted as they are incompatible and irreconcilable with the amended s 3(b) of the Act as the result was that the ambit of s 37(3) of the Act had been greatly reduced.

The explanatory statement to the bill for the amendment of s 3(b) of the Act, to my mind, is not of much assistance when it says, in quite a repetitive manner I might add, that:

> 2 Clause 2 seeks to amend section 3 of the Act by substituting paragraph (b) with a wider provision which will empower the State Authority to acquire any land which is needed by any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or to the public or any class of the public.

The learned trial judge was of the considered opinion that the appellant was a person interested as defined under the Act but had not satisfied the condition precedent to the making of an objection under s 37(1) of the Act which states:

> Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11, has made a claim to the Collector in due time and who has not accepted the Collector's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to the provisions of this section, make objection to —
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> (a) the measurement of the land;
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> (b) the amount of the compensation;
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> (c) the persons to whom it is payable;
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> (d) the apportionment of the compensation.

The learned trial judge was also of the view that the appellant had to be a corporation undertaking a work which in the opinion of the State Authority is of public utility, and on whose behalf such land was acquired pursuant to s 3, and since they were not, they were not deemed a person interested under s 37(3) of the Act.

A He had also opined that with the deletion of [the old] s 3(b) of the Act pursuant to the amendment, s 37(3) of the Act should also have been amended the same way by deleting the words originally in the former section. He has stated as follows:

> According to general principles of interpretation of statute where the language
B of a statute leads to a manifest contradiction of the apparent purpose of the enactment or to some inconvenience or absurdity which can hardly have been intended a construction may be put upon it which modifies the structure of the sentence; or where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness. Section 3 as amended does not empower anymore the State
C Authority to acquire land for a corporation undertaking work which is of public utility and therefore such corporation can no longer be the person interested who may make an objection in respect of the amount of compensation under s 37(3) even though the section retains its right to make such objection. It is absurd to allow such corporation to object when it can no longer remain as an agent for whom the land is acquired.
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D Another general principle of interpretation of statute is this: although in construing an Act of Parliament the court must always try to give effect to the intention of the Act and must look not only at the remedy provided but also at the mischief aimed at, it cannot add words to a statute or read words into it which are not there. The court cannot aid the legislature's defective phrasing of an Act it cannot add and mend, and, by construction, make up
E deficiencies which are left there. To do so would be to usurp the function of the legislature.

He had concluded by stating:

> The provisions of s 3(b) and the provisions of s 37(3) are incompatible and irreconcilable. The words 'any person or corporation undertaking a work
F which in the opinion of the State Authority is of public utility' in s 37(3) are nugatory and may therefore be deleted. This, I believe accords with the principle of interpretation that the statute if allowed to remain or is not deleted leads to manifest absurdity then the court may remove the absurdity. It is urged upon me to substitute for the words deleted the following words: 'any person or corporation for any purpose which in the opinion of the State
G Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public' which words as amended appear in s 3(b) of the Act. To do so, I believe usurps the function of the legislature and I therefore decline it. Firstly, the words in the proposed amendment simply cannot fit in verbatim into the sentence so as to give effect to the intended meaning. Secondly, the words 'in the opinion of the
H State Authority' in both the texts relate to two different words namely the 'purpose' for which the corporation requires the land and the 'work' which the corporation undertakes. In my view there has to be not only a structural amendment but also a substantive amendment and I repeat this is not the function of the court. Thirdly, the court should not vest a right in a statute where the legislature has not vested it. To allow the corporation to object to
I the collector on the ground that the award of the collector was excessive is to vest a right which the legislature fails to provide in the Act.
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> Accordingly I allow the registered proprietor's application and I dismiss the applicant's objection to the collector's award with cost.

The learned State Legal Adviser for the first respondent had supported the appellant's appeal by reasoning that the words '..., and on whose behalf such land was acquired pursuant to section 3,' with the commas at the relevant places, acted as a qualifier to a corporation undertaking a work which in the opinion of the State Authority is of public utility which the appellant was. A

Before we deal with the arguments of learned counsel for the second respondent, it is worthwhile examining the discrepancies caused by the amendment to s 3(b) of the Act without any amendment to s 37(3) of the Act. They are in fact related provisions and the amendment to one should have entailed an amendment to the other. A proper reading of s 3 then and now makes it clear that the State Authority acquires for itself for the purposes under paras (a) and (c) but acquires on behalf of another under para (b) and that is only for a person or corporation undertaking a work which in their opinion is of public utility up to 12 September 1991, and only for a person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public after 13 September 1991. This reasoning fits in nicely with the words, '..., and on whose behalf such land was acquired pursuant to the provisions of section 3,' because that was what it is and should be, namely that it was acquired by the State Authority on their behalf. It could have been better if they had added '(b)' after '3' as this makes it abundantly clear that the State Authority only acquires on another's behalf under para (b) but never under paras (a) and (c). Thus, when they had decided to widen the scope under s 3(b) of the Act, they should have likewise replaced the same words in s 37(3) of the Act in the same manner. The learned State Legal Adviser may like to correct this by suggesting the consequential amendment to s 37(3) of the Act in this way. B C D E F

One would have thought that by doing that, the appellant would not have the present problem, and they would end up as a person interested. Unfortunate for them, learned counsel for the second respondent had pointed out that the so called inconsistencies between s 3(b) and s 37(3) of the Act are quite irrelevant to the appeal, as the appellant would not come under s 3(b) in the first place. G

This was because, he said, in the relevant Form D for the proposed acquisition dated 19 February 1993, the purpose was 'bagi tujuan awam iaitu pengwujudan Bandar Baru Nilai, Negeri Sembilan' which means 'for a public purpose that is the creation of the Nilai New Town, Negeri Sembilan' which is further strengthened by para 7 of the State Financial Officer's affidavit filed in support of the application, that it was acquired by the State Authority for the petitioner for a public purpose. Although the words 'for the petitioner' were used, this is merely a circumstantial fact but the public purpose could only come under s 3(a) of the Act and nowhere else, and this rules out the involvement of any other person or corporation on whose behalf the scheduled land is acquired by the State Authority, namely the appellant. H I

A For these reasons, we had dismissed the appellant's appeal with costs and allowed the second respondent's cross-appeal with no order as to costs and, because the appellant was not a person interested in the first place, with an order that the first respondent pay the remaining 25% balance of RM4,933,820 with interest from the date it was due and payable to the second respondent. The deposit is to account for the taxed costs of the second respondent.

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Appeal dismissed; cross-appeal allowed.

Reported by Mariette Peters-Goh

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